

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ELGIN VINE,

Petitioner,

v.

Civ. 14-126 JCH/SCY

JAMES JANECKA and ATTORNEY GENERAL
OF THE STATE OF NEW MEXICO,

Respondents.

**ORDER ADOPTING MAGISTRATE JUDGE'S PROPOSED FINDINGS AND
RECOMMENDED DISPOSITION AND DISMISSING CASE**


This matter comes before the Court on Petitioner's Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody, *doc. 1*.

The Magistrate Judge filed his Proposed Findings and Recommended Disposition on November 12, 2014. *Doc. 13*. He found that the Petitioner had set forth four grounds for relief: (1) violation of Petitioner's Fifth, Sixth, and Fourteenth Amendment rights because he was convicted based on his own statements as to the victim's cause of death; (2) violation of his Fifth, Sixth, Eighth, and Fourteenth Amendment rights because he was convicted in the absence of evidence of his mens rea to kill the victim; (3) violation of his Fifth, Sixth, Eighth, and Fourteenth Amendment rights when the trial court failed to instruct the jury on imperfect self-defense; and (4) cumulative error. *Id.* at 2.

The Magistrate Judge determined that, while Petitioner had properly exhausted ground 3, he failed to exhaust Grounds 1, 2, and 4. *Id.* at 4. He therefore recommended that the Court allow Petitioner thirty days to voluntarily dismiss the unexhausted claims or to provide evidence demonstrating exhaustion. *Id.* at 6. If Petitioner failed to do so, he recommended dismissing the Petition at that time. *Id.*

Petitioner has filed no objections to the PFRD, and, upon review of the record, I concur with the Magistrate Judge's findings and recommendations.

Wherefore, IT IS HEREBY ORDERED that the Magistrate Judge's Proposed Findings and Recommended Disposition, *doc. 13*, is ADOPTED. Petitioner has thirty days from the date of the entry of this order to either voluntarily dismiss Grounds 1, 2, and 4 or to provide evidence demonstrating exhaustion of these claims. If Petitioner fails to do so, his Petition will be dismissed.


UNITED STATES DISTRICT JUDGE